

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOHN CLARENCE WALKER,

Petitioner,

VS.

DOUGLAS DRETKE,

Respondent.

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CIVIL ACTION NO. H-05-2392

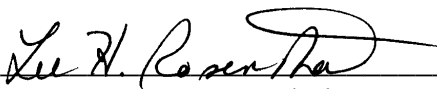
ORDER

On June 7, 2006, this court granted the respondent's motion for summary judgment on the ground that the petition for writ of habeas corpus was time-barred. (Docket Entry No. 13). The petitioner has filed a motion for rehearing, which this court construes as a motion for relief from judgment, (Docket Entry No. 15-1). The petitioner argues that this court improperly dismissed his petition because he failed to respond to the respondent's motion for summary judgment. As part of his motion for relief from judgment, the petitioner submits a response to the respondent's motion for summary judgment. The petitioner argues the state habeas court granted him an out-of-time petition for discretionary review and that this served to restart the federal limitations period. (Docket Entry No. 15-1, pp. 9-11). Based on Fifth Circuit precedent, this court determined that the petitioner's argument lacked merit. (Docket Entry No. 13, pp. 7-10). The petitioner argues that he was entitled to equitable tolling because of counsel's ineffective assistance. This court determined that he was not entitled to equitable tolling on that basis. (Docket Entry No. 13, p. 12). The petitioner's Motion for

Relief from Judgment, (Docket Entry No. 15-1), is DENIED for the reasons stated in this court's order dated June 7, 2006.

The petitioner also filed a motion to stay and abate proceedings. He explains that several claims were unexhausted and he wished to return to state court to exhaust them. (Docket Entry No. 15, pp. 4-7). This court dismissed the petitioner's petition for a writ of habeas corpus as time-barred. The petitioner's motion to stay and abate proceedings, (Docket Entry Nos. 15-2 and 15-3), is DENIED as moot.

SIGNED on July 10, 2006, at Houston, Texas.



Lee H. Rosenthal
United States District Judge